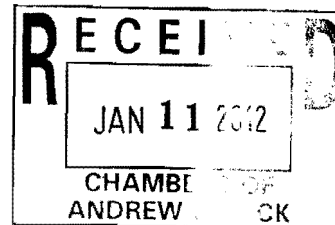


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SANFORD WITTELS & HEISLER, LLP

555 Montgomery Street, Suite 1206
San Francisco, CA 94111
(415) 391-6900
Fax: (415) 391-6901
Email: jwipper@swhlegal.com
www.swhlegal.com



1666 Connecticut Ave. NW
Suite 300
Washington D.C. 20009
(202) 742-7777
Fax: (202) 742-7776

440 West Street
Fort Lee, NJ 07024
(201) 585-5288
Fax: (201) 585-5233

1350 Avenue of the Americas
31st Floor
New York, NY 10019
(646) 723-2947
Fax: (646) 723-2948

BY ECF
January 10, 2012

MEMO ENDORSED 1/11/12

Request for a stay is DENIED.

SO ORDERED:

[Signature]
Hon. Andrew J. Peck
United States Magistrate Judge

[Signature]
[Signature]

VIA FACSIMILE

Honorable Andrew J. Peck
U.S.D.C. – Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *da Silva Moore, et al. v. Publicis Groupe SA, et al.*, Civ. No. 11 CV 1279

Dear Judge Peck,

Plaintiffs respectfully request your Honor stay the discovery rulings made on December 2, 5, and 6, 2011 regarding Plaintiffs' garden variety emotional distress claims, which are the subject of Plaintiffs' Rule 72(a) objections, filed on December 16, 2011. A stay is needed because it is unlikely that the Court will issue an order regarding Plaintiffs' Rule 72(a) objections prior to the deposition of Plaintiff Monique da Silva Moore, scheduled for January 13, 2012.

Pursuant to your Honor's rulings, despite Plaintiffs' stipulation limiting their emotional distress claims to garden variety claims, Plaintiffs must respond to deposition questions regarding their treatment history, thus waiving the psychotherapist patient privilege, or be sanctioned. Plaintiffs emailed Defendant MSLGroup ("MSL") yesterday evening to see if MSL would agree to defer asking questions that are the subject of the objections; Plaintiffs assured MSL that they would make themselves available for further questioning regarding their garden variety emotional distress claims should the Court deny the objections. MSL has not yet responded to this time sensitive request; thus, Plaintiffs are working on the assumption that they will not consent.

A stay pending resolution of the objections is necessary due to the ongoing discovery in this case. Plaintiffs timely filed their objections with Judge Sullivan on December 16, 2011. (Dkt. 55.) Defendant MSLGroup ("MSL") responded on January 3, 2012. (Dkt. 60.) To date, Judge Sullivan has not issued a ruling regarding Plaintiffs' objections. In addition, the case was reassigned to the Honorable Andrew L. Carter, Jr. yesterday. (Dkt. 63.) Thus, it seems unlikely that an order will issue prior to the deposition scheduled for this Friday. Additional Plaintiff depositions are scheduled in the coming weeks, including one on January 18, 2012.

Moreover, the situation meets all of the factors considered when granting stays. *See Hirschfeld v. Bd. Of Elections*, 984 F.2d 35, 39 (2d Cir. 1993) (reviewing the factors appellate courts consider in granting stays of lower courts' decisions). First, absent a stay, Plaintiffs face irreparable injury: the loss of a legal claim, the loss of a privilege, or sanctions. Second, MSL will not suffer any injury should the Court grant the stay; should the Court reject Plaintiffs' objections, those Plaintiffs who have already been deposed

will make themselves available for questions relating to their garden variety emotional distress claims. Third, based on the case law on garden variety emotional distress claims, there is a substantial possibility that Plaintiffs will be successful in their objections. *See Sims v. Blot*, 534 F.3d 117, 143 (2d Cir. 2008). Finally, there are public interests implicated by the rulings, because they appear to limit the federal medical privilege between a patient and a licensed psychotherapist. *See Jaffee v. Redmond*, 518 U.S. 1, 15 (1996).

For all of these reasons, Plaintiffs respectfully request your Honor stay the discovery rulings made on December 2, 5, and 6, 2011 that are the subject of Plaintiffs' Rule 72(a) objections.

Sincerely,

/s/ Janette Wipper

Janette Wipper

Cc: All counsel of record (via e mail)

ECF TRANSCRIPTION SHEET



ANDREW J. PECK
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT
Southern District of New York
United States Courthouse
500 Pearl Street, Room 1370
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933
Telephone No.: (212) 805-0036

Dated: January 11, 2012

Total Number of Pages: 3

TRANSCRIPTION OF MEMO ENDORSED ORDER

Request for a stay is DENIED.

Copies by ECF to: All Counsel
Judge Andrew L. Carter, Jr.